IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5905 OF 2005

M/s.Chaitanya Builders & Ors. .. Petitioners

Vs.

Sou.Indira Pandit Dhavale & Ors. ..Respondents

Mr.P.B.Shah for the petitioners

Mr.R.S.Apte i/b A.A.Garge for the respondent no.2 to 5

CORAM : S.U.KAMDAR, J
DATED : 2ND DECEMBER, 2005

P.C.:

1. The present petition challenges the order passed on Ex.23 in Darkhast Application No.6 of 2002 in Special Civil Suit No.2 of 2000 dt.5.8.05. The learned Trial Court has granted the warrant against the Judgement Debtor on the ground that the conditional decree passed by the court is required to be executed because respondents have complied with all the conditions. Trial court has made an observation that the Judgement Debtor has not given any reply to the affidavit filed by the respondent decree holder setting out therein in detail that they have complied with all the terms and conditions of the agreement as per the decree. I have perused the say dt.1.4.05. The say is of

course not satisfactory but it is the contention of the learned counsel for the petitioners that on record there is already enough material including the fact that a Civil Suit is pending being Civil Suit No.430 of 1998 granting injunction against developing the said property. In my opinion, the matter requires to be considered afresh by the trial court by giving an opportunity to the petitioner to file reply to the affidavit filed by respondent decree holder indicating that all the terms and conditions are complied with. In that light of the matter, the impugned order is quashed and set aside.

2. Petitioner is given an opportunity to file say afresh to the Darkhast Application No.6 of 2002 and to the affidavit filled by respondent decree holder. Such an affidavit to be filed within one week. Trial court is directed to dispose of the Darkhast afresh on or before 31.12.05. Petitioner is directed to pay the cost of the present proceeding to the respondent being a sum of Rs.10000/- and the learned counsel for the petitioner states that he has no objection on

imposition of the aforesaid cost. Petition is disposed of accordingly.